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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,537	10/28/2002	Stephen L. Parkhurst	71353-5	3642

20915 7590 10/23/2003
MCGARRY BAIR PC
171 MONROE AVENUE, N.W.
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EXAMINER

CONLEY, SEAN E

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 10/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/065,537

Applicant(s)

PARKHURST ET AL.

Examiner

Sean E Conley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2002 and 21 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 29 of U.S. Patent No. 6,528,014 B1 in view of Horan et al. (U.S. Pat. 5,896,591 A).

Claim 29 of U.S. Pat. 6,528,014 B1 discloses the claimed invention except for a foul air eliminator that is self-contained within a housing. Also, claim 29 does not disclose the features recited in claims 3-7 of the applicant's presently claimed invention.

Horan et al. disclose an air freshener device for use with a toilet in order to effectively deodorize the air. Figure 1 shows a conventional toilet (1000) comprising a toilet bowl (1010) and mounted to the rear of the toilet bowl (1010) is an air treatment device assembly (100) including a cylindrical housing (110). Inside the cylindrical housing (110) is a carbon filter (162), two blower zones (170, 180), and fans (172, 182)

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for deodorizing the air. Vents (174, 184) are located in the opposing end walls (176, 186) of the housing. The fans (172, 182) are incorporated into a circuit for energization by a power source (390), which can be either household current or batteries (see column 2, lines 33-67 and figures 1-5).

Therefore, it would have been obvious to one of ordinary level of skill in the art at the time the invention was made to modify the invention of U.S. Pat. 6,528,014 B1 and house the foul air eliminator in a self-contained housing attached to a toilet and further connect the foul air eliminator to a power source such as household current or a battery as taught by the invention of Horan et al. in order to deodorize the foul odors associated with toilets.

3. Claim 8 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 29 of U.S. Patent No. 6,528,014 B1 in view of Horan et al. as applied to claim 1 above, and further in view of Bruyere (U.S. Pat. 6,003,157).

Claim 29 of U.S. Pat. 6,528,014 B1 in view of Horan et al. discloses the claimed invention except for an impeller or fan that operates in a range of 20 SCFM to 150 SCFM.

Bruyere discloses a device (20) for ventilating and deodorizing air from a toilet (22). The device (20) includes an air intake manifold (32) for collecting air and the devices uses a filter canister (40). The filter canister (40) is a cylindrical shaped member which includes a base (52) and a lid (54) that define an internal cavity (56). A

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fan assembly (60) is located in the base portion (52) and includes a squirrel cage type fan (62) and associated housing (64). A motor (66) is mounted adjacent the lower end of the cavity (56). With respect to the motor (66) and fan assembly (60), it is preferred that a combination which provides an airflow rate of approximately 120 CFM to 160 CFM be utilized in order to minimize turbulent airflow near the toilet bowl (24) (see column 4, line 6 to column 5, line 2 and figures 1-3).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the invention of U.S. Pat. 6,528,014 B1 and use a fan and motor that operates in the range of 120 CFM to 160 CFM as taught by Bruyere in order to minimize turbulent airflow near the toilet bowl.

4. Claim 9 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 29 of U.S. Patent No. 6,528,014 B1 in view of Horan et al. as applied to claim 1 above, and further in view of Bergeron (U.S. Pat. 5,454,122).

Claim 29 of U.S. Pat. 6,528,014 B1 in view of Horan et al. discloses the claimed invention except for a fragrance repository located between the converter and the exhaust port.

Bergeron discloses a toilet ventilator with a room air freshener and comfort heater. Air enters a main blower module (40) through the inlet port (123). Inlet duct (124) directs the incoming air to the air filter and fragrance cartridge (140), then to the suction side of the main blower (42). The main blower (42) is a centrifugal fan or squirrel

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cage fan which is powered by the main blower motor (41). The air passes through the main blower (42) and exits under pressure through the outlet duct (125). The air filter and fragrance cartridge (140) contains layers of activated charcoal-containing filter medium 141 that are separated by rings (142). Any noxious gases in the incoming air are removed by the activated charcoal in the filter medium. After it is filtered, the air passes into the fragrance chamber (144) that contains fragrance granules (146) before it is directed back into the interior space of the toilet bowl (see column 5, line 55 to column 6, line 12 and figure 5).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the device of U.S. Pat. 6,528,014 B1 and include a fragrance repository located between the converter and the exhaust port as taught by the invention of Bergeron in order to add additional fragrance to the air after the foul odors have been removed by the converter.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean Conley, whose telephone number is (703) 305-2430. The examiner can normally be reached on Monday-Friday 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Robert Warden, can be reached at (703) 308-2920. The Unofficial fax phone number for this group is (703) 305-7719. The Official fax phone number for this Group is (703) 872-9310. The direct fax number to the examiner is (703)-746-8859.

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When filing a FAX in Technology Center 1700, please indicate in the Header (upper right) "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communications with the PTO that are not for entry into the file of the application. This will expedite the processing of your papers.

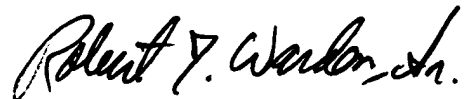
Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [robert.warden@uspto.gov]. All Internet e-mail communications will be made of record in the application file. PTO employees will not communicate with applicant via internet e-mail where sensitive data will be exchanged or where there exists a possibility that sensitive data could be identified unless there is of record express waiver of the confidentiality requirements under 35 U.S.C. 122 by the applicant. See the Interim Internet Usage Policy published by the Patent and Trademark Office Official Gazette on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist, whose telephone number is (703) 308-0661.

SEC

AC

October 17, 2003



ROBERT J. WARDEN, SR.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700